condition for Appeal.   Please amend the application in the

following manner:

In the Claims:

Please rewrite claims 1, 10 and 12 to read as follows, while

cancelling the previous version of each of these claims.

--1.  (Twice Amended) Apparatus for the measurement of fruit

particles in a matrix without removing the fruit particles from

this matrix, comprising:

a substantially opaque cabinet;

a sample tray adapted to received a fruit matrix

of fruit particles which are within a matrix selected

from the group consisting of a sugar matrix, a starch

matrix or a sugar and starch matrix, said fruit matrix

is used in fruit fillings, toppings, dairy products or

cooked food products;

a camera in the upper portion of said cabinet for

taking an image of the fruit particles while they

remain within the fruit matrix;

a light source in said cabinet; and

a computer with image analyzing software which analyzes

said image of the fruit particles in order to measure the fruit

particles without having removed them from the fruit matrix.--

--10. (Twice Amended) Apparatus for the measurement of fruit particles in a matrix without removing the fruit particles from this matrix, comprising:

a substantially opaque cabinet with a non-reflecting inside surface;

a sample tray with a light-transmitting bottom, said sample tray adapted to receive a fruit matrix of fruit particles which are within a matrix selected from the group consisting of a sugar matrix, a starch matrix or a sugar and starch matrix, said fruit matrix is used in fruit fillings, toppings, dairy products or cooked food products;

a camera in the upper portion of said cabinet for taking an image taking an image of the fruit particles while they remain within the fruit matrix;

a light box with light intensity adjusting switches;

an incident light source; and

a computer with image analyzing software which analyzes said image of the fruit particles in order to measure the fruit particles without having removed them from the fruit matrix.--

--12. (Twice Amended) A process for the measurement of fruit particles in a matrix without removing the fruit particles from this matrix comprising:

placing in a sample tray a fruit matrix, said fruit matrix being fruit particles which are within a matrix selected from the group consisting of a sugar matrix, a starch matrix or a sugar and starch matrix, said fruit matrix is used in fruit fillings, toppings, dairy products or cooked food products;

illuminating said fruit matrix so that an image may be obtained in which the fruit particles are distinguishable from the background;

capturing a computer-readable image of at least a portion of said illuminated fruit matrix; and

using a computer and an image analyzing software program to analyze said image and obtain information concerning said fruit particles without removing the fruit particles from the fruit matrix.--